

March 9, 2022

The Honourable Carolyn Bennett, M.D., P.C., M.P.
Minister of Mental Health and Addictions and Associate Minister of Health

The Honourable Jean-Yves Duclos
Minister of Health

cc: Hon. Sheila Malcolmson, B.C. Minister of Mental Health and Addictions
His Worship Mayor Kennedy Stewart, Mayor, City of Vancouver
Dr. Eileen de Villa, Medical Officer of Health, City of Toronto

Dear Ministers Bennett and Duclos:

Re: Threshold quantities in exemption requests

In Canada, approximately 25,000 people died from an overdose between January 2016 and June 2021 alone, a crisis that has been fueled by the criminalization of drugs and affecting people who use them. Criminalization increases the toxicity and volatility of the drug supply, contributes to stigma, shame, and discrimination, and creates barriers to care that cannot be removed by simply investing in treatment options and harm reduction services.

Acknowledging that criminalization is a powerful driver of the overdose crisis, provincial and municipal authorities are increasingly joining calls to decriminalize drug possession for personal use (i.e. “simple possession”) and Vancouver, the Province of British Columbia, and Toronto have each submitted requests for an exemption from the *Controlled Drugs and Substances Act* to decriminalize simple possession. We understand that you are currently reviewing those exemption requests. We also understand that the issue of “thresholds” — to distinguish simple possession from possession for the purpose of trafficking — has been a central point of discussion, as has the claim that threshold quantities are necessary to define in the first place.

But there are significant risks of “net-widening” in defining such thresholds, particularly without prioritizing the expertise of people who use drugs and reflecting real-world patterns of use.

Police across Canada are currently able to distinguish between simple possession and possession for the purpose of trafficking without defined thresholds, and their ability to distinguish these two activities is not affected by virtue of an exemption application. If thresholds are too low, people who purchase large quantities of substances will remain criminalized. Moreover, establishing thresholds without centering the expertise of people who use drugs will invariably result in the surveillance, policing, arrest, and prosecution of more people who use drugs, and especially Indigenous, Black, and other racialized, marginalized, and low-income communities, who are profiled and disproportionately arrested and incarcerated for drug offences. **In light of this reality, we strongly urge you to refrain from requiring or establishing threshold quantities in provincial and municipal exemption requests.**

If the Government of Canada insists on threshold amounts, these must be defined by people who use drugs and also be appropriately high so as to eliminate the abuse of police discretion, and the enforcement and confiscation of below-threshold amounts. Otherwise, Canada risks

creating a model that is *more restrictive* than the one currently permitted by courts. Drug markets may adjust to such a restrictive model, including via changes to the potency and amounts held or sold. Other potential harms resulting from low thresholds may include the incentivization of interactions with the unregulated market as people try to avoid criminalization by frequently purchasing smaller amounts, and increasing concentration or potency of drugs to keep quantities below the threshold, potentially increasing overdose risk.¹

Threshold quantities should also serve as a floor, not a ceiling; in other words, possession or transfer of a quantity below the set threshold is never a crime. In the case of possession or transfer of a quantity above the threshold, the burden of proof remains on the prosecution to prove all the elements of the offence. An allegation of trafficking above the threshold, for example, still requires the prosecution to prove intent to sell in order to secure a conviction, be it for possession for the purpose of trafficking or actual trafficking. A court can still decide, based on the evidence before it in a given case, that the possession was for personal use and not for the purpose of trafficking, or that the transfer of the substance did not amount to trafficking.

The decriminalization of drug possession is long overdue — but it must be done right,² or Canada risks reproducing the numerous harms of drug prohibition. Therefore, as you consider these exemption requests, we urgently implore you to:

- Refrain from requiring or establishing threshold quantities in provincial and municipal exemption requests; and
- Prioritize and centre the expertise of people who use drugs in all discussions related to provincial and municipal exemption requests, particularly as this relates to threshold quantities, should they be adopted.

Sincerely,

Association des intervenants en dépendance du Québec (AIDQ)
AVI Health & Community Services
BC Association of Aboriginal Friendship Centres
BC Centre on Substance Use
Black Coalition for AIDS Prevention
Black Lives Matter Canada
Canadian Drug Policy Coalition
Canadian Students for Sensible Drug Policy
Centre on Drug Policy Evaluation
Drug User Liberation Front
Harm Reduction Nurses Association
HIV Legal Network
MAPS Canada
Moms Stop the Harm

¹ A. Greer et al, “The details of decriminalization: Designing a non-criminal response to the possession of drugs for personal use,” *International Journal of Drug Policy* 102 (2022) 103605.

² *Decriminalization Done Right: A Rights-Based Path for Drug Policy*, 2021:

<https://www.hivlegalnetwork.ca/site/decriminalization-done-right-a-rights-based-path-for-drug-policy/?lang=en>.

Niagara Community Legal Clinic
Ontario Harm Reduction Network
Parkdale Queen West Community Health
Centre Pivot Legal Society
SOLID Outreach
South Riverdale Community Health Centre
Toronto Drug Users Union
Toronto Harm Reduction Alliance
Toronto Overdose Prevention Society